

**Exhibit B**

**(Lehman Health Care Trust)**



**LEHMAN HEALTH CARE TRUST**

DATED AS OF

SEPTEMBER 12, 2008



**LEHMAN HEALTH CARE TRUST**

**Effective September 12, 2008**

This Agreement, made and effective as of September 12, 2008, is by and between ACESO HOLDINGS INC., a corporation organized under the laws of the state of Delaware (the "Corporation") and Paul Imbimbo (the "Trustee" and collectively with any additional trustees hereunder, "Trustees").

**RECITALS**

A. The Corporation hereby establishes this Trust (the "Trust") in order to provide funds for all benefits under the Lehman Brothers Holdings Inc. Group Benefits Plan ("Plan") which are eligible for payment by a voluntary employees' beneficiary association ("VEBA") under Section 501(c)(9) of the Internal Revenue Code of 1986, as amended ("Code"); and

B. The Trust is intended to constitute a VEBA and to meet the requirements of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"); and

C. Lehman Brothers Holdings Inc. ("Parent") is the principal sponsor of the Plan, and the Corporation has become a co-sponsor of the Plan (but the Corporation shall not be directly liable for any financial obligations under the Plan); and

D. Affiliated employers whose employees participate in the Plan may from time to time contribute assets to the Trust, which when received by the Trustees, will constitute a trust fund held for the exclusive benefit of the participants and beneficiaries of the Plan in accordance with the terms hereof; and

E. The Corporation desires that the Trustees hold and administer such funds and the Trustees are willing to hold and administer such funds pursuant to the terms of this Trust agreement as amended and restated; and

G. The authority to control and manage the ongoing operation of the Plan shall be retained by the Parent or its delegate, but the Corporation shall have



exclusive authority and control with respect to the Trust (the "Administrator"), and the Administrator shall have the authority and shall be subject to the duties of the Administrator with respect to the Trust specified in this Trust agreement and to the extent applicable, the Plan.

II. The Corporation is a named fiduciary of the Trust with respect to the management and control of the assets of the Trust.

The parties agree as follows:

## **ARTICLE 1**

### **DEFINITIONS**

For purposes of this Trust agreement, the following terms are defined as provided below.

"Administrator" means Parent or its delegate (including the Corporation in the event it elects to assume the responsibilities of being the Administrator).

"Applicable Law" means (in each case after taking into account the full preemptive effect of ERISA): (a) any applicable statute of a jurisdiction, whether foreign, federal, state or local, (b) any other applicable law, rule or regulation of any governmental entity, or (c) any applicable foreign, federal or state common law.

"Authorized Person" mean any Person who has been designated by written notice from the Corporation, the Administrator or Investment Manager (or by written notice from any Investment Manager or any agent designated by the Corporation, Administrator or Investment Manager) to act on behalf of such Person or the Trust Fund hereunder. Such Persons will continue to be Authorized Persons until such time as the Trustees receive Proper Instructions from the Corporation, Administrator or Investment Manager (or its agent or an Investment Manager, as the case may be) that any such Person is no longer an Authorized Person.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commission" means the United States Securities Exchange Commission.



"Dedicated Account" means an account within the Trust dedicated for specified purposes.

"Eligible Securities Depository" shall mean a system for the central handling of securities as defined in Rule 17f-4 under the Investment Company Act that meets the requirements of an "eligible securities depository" under Rule 17f-7 under the Investment Company Act of 1940, as amended, as such may be amended or interpreted from time to time by the Commission.

"Employer" means XYZ Corporation and any affiliate thereof which participates in the Plan.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Investment Account" has the meaning set forth in Section 4.2 of this Trust agreement.

"Investment Manager" has the meaning set forth in Section 4.3 of this Trust agreement.

"Participants" means participants of the Plan and their eligible spouses and dependents.

"Person" means a natural person, trust, estate, corporation of any kind or purpose, mutual company, joint-stock company, unincorporated organization, association, partnership, joint venture, limited liability company, employee organization, committee, board, participant, beneficiary, Trustees, partner or venture acting in an individual, fiduciary, or representation capacity, as the context may require.

"Proper Instructions" shall mean: (i) either a tested telex or a written (including, without limitation, facsimile transmission) request, direction, instruction or certification signed or initialed by an Authorized Person; (ii) a telephonic or other oral communication by an Authorized Person; or (iii) a communication effected directly between an electro-mechanical or electronic device or system (including, without limitation, computers) by or on behalf of an Authorized Person that is transmitted in compliance with the security procedures established for such communications by the



Trustees and the Authorized Person; provided, however, that telephonic or other oral communications shall be confirmed on the same day as such instructions are given by the Authorized Person by tested telex or in a writing (including a facsimile transmission) signed or initialed by or on behalf of such Authorized Person; and provided further, however, that communications purporting to be given by an Authorized Person shall be considered Proper Instructions only if the Trustees reasonably believe such communications to have been given by an Authorized Person with respect to the transaction involved. Proper Instructions shall include all information necessary to permit the Trustees to fulfill their duties and obligations thereunder. The Trustees shall subject all Proper Instructions provided under subsection (i) and (ii) to a commercially reasonable authentication procedure.

“Securities or other Property” means any property, real or personal, tangible or intangible, or part interest therein, wherever situated, including, without limitation, currency, governmental, corporate or personal obligations, trust and participation certificates, partnership interests, interests in limited liability companies, annuity or investment contracts issued by an insurance company, leaseholds, fee titles, mortgages and other interests in realty, preferred and common stocks, mutual funds, notwithstanding that the Trustees are providing services to or receiving fees from the investment company or investment trust as investment advisor, custodian, transfer agent or sub-transfer agent, registrar, administrator, or in any other capacity, certificates of deposit, financial options and futures or any other form of option, evidences of indebtedness or ownership in foreign corporations or other enterprises or indebtedness or ownership, including securities or other property of the Corporation regardless of whether the same are legal investments for custodians under any Applicable Law other than ERISA.

“Securities Systems” shall mean (i) the Depository Trust Company, including its Mortgage Backed Securities Division and/or (ii) any book-entry system as provided in (1) Subpart O of Treasury Circular No. 300, 31 CFR 306, (2) Subpart B of 31 CFR Part 350, (3) the book-entry regulations of federal agencies substantially in the form of Subpart O, (4) any other domestic clearing agency registered with the Commission



under Section 17A of the Securities Exchange Act of 1934, as amended, which acts as a securities depository.

"Trust Fund" means all assets held by the Trustees in the Trust under the provisions of this Trust agreement at the time of reference.

## ARTICLE 2

### THE TRUST FUND

#### 2.1 Trust Title

This Trust shall be known as the "Lehman Health Care Trust".

#### 2.2 Interpretation of Plan

The Trustees shall not be deemed a party to the Plan, and the Administrator shall be solely responsible for the interpretation of any Plan terms or conditions affecting any provision of this Trust agreement. In the event of any conflict between this Trust agreement and the provisions of the Plan or any other instrument or agreement forming part of the Plan, the provisions of this Trust agreement shall take precedence. The Corporation shall be responsible for maintaining the exempt status of the Trust under Section 501(c)(9) of the Code.

#### 2.3 Receipt of Assets

The Trustees shall receive and accept into the Trust Fund all sums of money and all Securities or other Property paid to it by or upon Proper Instructions of the Corporation, at the Corporation's sole discretion, which are reasonably acceptable to the Trustees. All such contributions, together with the income therefrom, shall be held by the Trustees pursuant to the terms of this Trust agreement. To the extent income is earned and received by the Trust (including realized gains and realized losses) with respect to any taxable year of the Trust, such income shall be separately accounted for and used to provide permissible benefits upon Proper Instructions of the Administrator and to pay reasonable administration expenses under the Plan and the Trust upon Proper Instructions of the Administrator or Investment Manager. Such income shall not be accumulated within the Trust but shall instead be paid out during the same calendar year (or as soon thereafter as reasonably possible) for the above-stated purpose. The Trustees need not



inquire into the source of any money or property transferred to it nor into the authority or right of the transferor of such money or property to transfer such money or property to the Trustees.

**2.4 No Reversion to the Employer**

At no time (either by operation, amendment or termination of the Plan or Trust, or otherwise) shall any part of the Trust Fund (other than such part as is required to pay taxes and administration expenses) be used for, or diverted to, purposes other than the payment of benefits permitted by section 501(c)(9) of the Code, nor shall any part of a Dedicated Account be used for, or diverted to, purposes other than payments for which the Dedicated Account was established; provided, however, that in the event that the Trust is terminated, assets of the Trust may be distributed as described in Article 11, as directed by Proper Instruction of the Corporation.

The Trustees shall be under no obligation to return any part of the Trust Fund as provided in this Section 2.4 until the Trustees have received a written certification from the Corporation or the Administrator, as the case may be, that such return is not in violation of this Section 2.4, the Plan and the requirements of Applicable Law. The Trustees shall rely conclusively on such written certification and shall be under no obligation to investigate or otherwise determine its propriety. The amount of any contribution(s) to be returned in accordance with this Section 2.4 shall be limited to Trust Fund assets.

**2.5 No Guarantees**

(a) None of the Corporation, Administrator, Investment Manager or the Trustees guarantee the Trust Fund from loss or depreciation, nor the payment of any amount which may become due to any person under the Plan or this Trust agreement, nor do the Trustees have any obligations to compel the timing or amount of any payments under the Plan.

(b) Nothing in this Trust agreement shall constitute or be construed as creating a contractual obligation of any Employer to Participants under the Plan or any







(c) If the Administrator shall find that a Participant entitled to benefits hereunder is deceased or is unable to manage his or her affairs for any reason, the Trustees shall, upon the direction of the Administrator, pay any benefit payable to such person to the duly appointed legal representative, if there be one, and if not, to the spouse, parents, children, or other relatives or dependents of such Participant, or any of them, as the Administrator in its discretion may determine. Any payment so made shall be a complete discharge of all liability with respect to such benefits.

## 2.7 Valuation of the Trust Fund

(a) The Trustees shall determine the fair market value or fair value of Securities or other Property held in the Trust Fund based upon a valuation policy established from time to time by Investment Manager. The Trustees and Investment Manager may also adopt special valuation methods, procedures and policies applicable to one or more Investment Managers or Investment Accounts or both, or to assets that cannot be valued using any of the methods set forth in Subsection 2.7(d) below.

(b) Assets should be valued at market value if market quotations from third parties are readily available. Values should be as of the close of trading on the date of valuation on the New York Stock Exchange (NYSE), typically 4:00PM New York time, regardless of whether the principal market on which such instrument is traded is open for trading before or after the close of trading on the NYSE.

(c) Investment Manager and investment managers hired to provide investment advice to an Investment Account or the Trust Fund normally should not provide prices, whether self-calculated or obtained from a third party to forward, to the Trustees unless authorization has been received from Investment Manager. Market quotations shall be obtained by the Trustees from or with reference to third party sources such as pricing services, brokers or dealers in accordance with the provisions below.

(d) Investments are considered priced by automated pricing sources when an investment is priced by the Trustees' pricing database that uses vendor pricing feeds. The Trustees will regularly review the automated pricing vendor feeds for the investments to ensure the vendor is still the most appropriate primary source of information for each instrument which is being valued by the pricing source. If the



Trustees believe that the pricing vendor might not be the most appropriate primary source of information for a particular asset class, the Trustees shall make a recommendation to Investment Manager for consideration of approval. The Trustees shall ensure that the pricing services do a stale price review of securities. Investment Manager, as it deems appropriate, may provide Proper Instructions to the Trustees to change any pricing vendor by security type or by specific security.

(e) The Trustees may rely on a quote from a single broker or dealer where prices are not available from an automated pricing source, unless otherwise instructed in Proper Instructions by Investment Manager.

(f)

(i) If more than one exchange is open for trading when the Trustees determine the value of an exchange traded instrument, the relevant Investment Manager will identify for the Trustees the exchange which is the primary market for valuation purposes.

(ii) If market quotations are not readily available, upon notification by the Trustees, Investment Manager must value such securities at fair value, except to the extent that the valuation of such security or securities (considered both individually and in the aggregate and utilizing a reasonable range of valuations) within the Trust Fund or Investment Account would not be material to the reported value of the Trust Fund or the relevant Investment Account. If market quotations are readily available for a security, fair value pricing should not be used unless an event that will affect the value of such securities ("significant event") as determined by Investment Manager has occurred since the last closing price but before the time the value of the Trust Fund or Investment Account is determined.

(iii) Market quotations should not be deemed "readily available" if:

(1) The primary exchange or market in which a security is traded is not open for trading for a normally scheduled trading day, or



(2) The primary exchange or market in which that security is traded is halted during the trading day and trading in that security does not resume prior to the close of the exchange or market,

(3) The security is traded on a foreign exchange and such exchange has mechanisms in place which confine any one day's price movements in an individual security to a predetermined range and any individual security reaches the maximum price movement prior to the market's closure, preventing further trading of such security.

(g) Investment Manager will make fair value determinations as required by its valuation policy in effect from time to time. "Fair value" is the amount that the owner of a security or group of securities might reasonably expect to receive upon a current sale under the relevant circumstances to an arm's length buyer and shall be based on the price of a single security (e.g. 1 share or 1 bond), which price is then used for each security in the Trust Fund or Investment Account.

### **ARTICLE 3**

#### **DISBURSEMENTS AND TRANSFERS FROM THE TRUST FUND**

##### **3.1 Disbursements from the Trust Fund**

(a) The Trust Fund shall be maintained for the purpose of providing benefits and paying reasonable administration expenses under the Plan and the Trust, including investment management fees and expenses, if any, which may be provided by an organization exempt from taxation under Section 501(c)(9) of the Code.

(b) The Trustees shall from time to time make payments out of the Trust Fund in cash or in-kind to any Person, including the Corporation, in such manner, in such amounts and for the purpose of providing benefits and paying administration expenses of the Plan or the Trust directly or indirectly through reimbursement of any Person (including reimbursement to the Corporation for the payment of expenses relating to the Trust) as may be directed in Proper Instructions of the Administrator or, solely with respect to the investment or management of the Trust Fund, Investment Manager. Reimbursement to any Person, including the Corporation, for the payment of Plan



benefits and expenses may be made at any time following submission of appropriate documentation, but no later than December 31 of the calendar year following the year of payment. Payment in response to such directions shall be a complete discharge by the Trustees of their responsibility for the holding and safekeeping of such assets and any assets so paid over shall no longer be part of the Trust Fund.

(c) Unless otherwise directed by the Administrator, payments of benefits under the Plan shall be made in the order in which claims for payment are processed in the ordinary course under the Plan.

(d) The Administrator and Investment Manager shall each be responsible for ensuring that any payment directed by it under this Article conforms to the provisions of the Plan, this Trust agreement and the provisions of Applicable Law. Each direction of the Administrator or Investment Manager shall be in the form of Proper Instructions and shall be deemed to include a certification that any payment or other distribution directed thereby is one that the Administrator or Investment Manager, as the case may be, is authorized to direct and is permissible under the Plan, this Trust agreement and Applicable Law, and the Trustees may conclusively rely on such certification without further investigation unless the Trustees have actual knowledge to the contrary. The Trustees shall not incur any liability or other damage on account of any payments or other distributions made by it in accordance with Proper Instructions of the Administrator or Investment Manager.

(e) Payments from the Trust shall be made first from investment income (*i.e.*, realized gains and realized losses), next from any Participant contributions, and last from Corporation and other Employer contributions.

### 3.2 Transfer of Trust Assets

In order to facilitate the investment of the Trust Fund, the Corporation or Investment Manager may direct in Proper Instructions to the Trustees to enter into custody arrangements with third parties reasonably acceptable to the Trustees and transfer assets from the Trust Fund to the custody of that third party.



### 3.3 Settlement of Securities Transactions

The Trustees are authorized to settle purchases and sales (including free receipts and deliveries, and exchanges) with respect to the Securities or other Property, all in accordance with the established practices for the market and type of security involved or in accordance with Proper Instructions from Investment Manager or any Investment Manager with respect to assets under its management.

### 3.4 Settlement Practices

(a) The Trustees will utilize the following settlement practice, unless directed otherwise by Investment Manager. Standing settlement practice shall be the customary or established practices and procedures in the market where the transactions occur, including, without limitation, delivery to the purchaser thereof or to a dealer therefor (or an agent of such purchaser or dealer) against expectation of receiving later payment; delivering money to the seller thereof or to a dealer therefor (or an agent for such seller or dealer) against expectation of receiving later delivery of such securities; or in the case of a sale or purchase effected through a Securities System, in accordance with the rules governing the operation of the Securities System. The Trustees shall inform Investment Manager of its settlement policies from time to time and, upon request, shall discuss such policies and how they affect the operation of the Trust Fund. The Trustees shall provide information in writing whenever possible on the settlement practices for the countries in which the Trust Fund may invest. The Trustees shall provide to Investment Manager a schedule of countries which are eligible for contractual settlement and may revise such schedule from time to time upon thirty (30) days notice to Investment Manager. In those countries for which the Trustees do not offer contractual settlement or for those transactions which are not eligible for contractual settlement, settlement shall be based on the actual settlement of securities transactions.

(b) The Trustees shall utilize contractual settlement in the United States whenever possible. In the United States and other markets for which contractual settlement is used, the Trustees shall credit or debit the appropriate Investment Account in connection with the purchase or sale of publicly-traded securities held for the time being on behalf of the Trust on a contractual settlement basis in accordance with Subsections (i) to (iii) below:



(i) The Trustees shall make available provisional credit of settlement proceeds on a contractual settlement basis. The Trustees reserve the right to reverse any such crediting at any time before actual receipt of the item associated with the credit when the Trustees determine that actual receipt will not be received in due course for such an item.

(ii) In markets where the Trustees make available the provisions of this Section 3.4(b), the consideration payable in connection with a purchase transaction shall be debited from the appropriate Investment Account upon the contractual settlement date for the relevant purchase transaction. The Trustees shall promptly credit such amount at the time that the Investment Manager of such Account or Investment Manager, as the case may be, notifies the Trustees by appropriate instruction that such transaction has been cancelled.

(iii) All credits made under this Section 3.4(b) are made subject to actual collections. The Trustees shall not be liable to the Trust for any such amount that is not actually collected in accordance with the terms of this Trust agreement. The provisions of this Section 3.4(b) are intended to facilitate settlement in ordinary course.

### 3.5 Responsibility for Global Assets.

(a) Securities or other Property (other than currency) will be held in the country or other jurisdictions where (i) the principal trading market or central depository or clearinghouse for such Securities or other Property is located, (ii) such Securities or other Property are to be presented for payment or (iii) such Securities or other Property are acquired, unless Investment Manager or an Investment Manager specifically requires another location acceptable to the Trustees. Foreign currency held as an incident to investments in Securities or other Property located outside of the United States shall be held on deposit with the Trustees (including its foreign branches) unless otherwise invested, subject to any requirement under Applicable Law or local market practice that the Trust maintain a separate cash account with a Subcustodian.

(b) The Trustees may act under this Trust agreement with respect to Securities or other Property located outside the United States through the Subcustodians with which the Trustees have entered into subcustodial agreements from time to time



("Subcustodians"). Except as otherwise permitted by ERISA, each Subcustodian shall be an eligible subcustodian under Department of Labor Regulation 404b-1(a)(2)(ii)(C), as amended or any successor to that regulation. The Trustees and Subcustodians are authorized to hold any of the Securities or other Property in their account with any securities depository in which they participate. In this regard, Cedel and Euroclear shall be deemed to be Subcustodians of the Trustees with respect to those Securities or other Property, if any, which the Trustees elect to hold at those entities. If Investment Manager or an Investment Manager wishes to have any assets of the Trust Fund held in the custody of an institution other than the established Subcustodians (or their securities depositories), such arrangement must be authorized by a written agreement, signed by the Trustees and Investment Manager. The Trustees reserve the right to refuse to accept delivery of Securities or other Property in countries and jurisdictions other than those it customarily makes generally available to employee benefit plans from time to time.

(c) The Trustees reserve the right to add new, replace or remove Subcustodians. Investment Manager will be given reasonable notice by the Trustees of any such change. Upon request by Investment Manager, the Trustees will identify the name, address and principal place of business of any Subcustodian of the Trust Fund and the name and address of the governmental agency or other regulatory authority that supervises or regulates such Subcustodian.

(d) Each Subcustodian will hold such Securities or other Property in accounts identified on such Subcustodian's books as special custody accounts for the exclusive benefit of customers of the Trustees. Any Securities or other Property held by a Subcustodian will be subject only to the instructions of the Trustees. Any Securities or other Property held in a securities depository for the account of a Subcustodian will be subject only to the instructions of such Subcustodian. Any agreement the Trustees enter into with a Subcustodian for holding its customer's Securities or other Property shall provide that such Securities or other Property will not be subject to any right, charge, security interest, lien or claim of any kind in favor of such Subcustodian except for safe custody or administration, and that the beneficial ownership of such assets will be freely transferable without the payment of money or value other than for safe custody or administration.



## ARTICLE 4

### INVESTMENT OF THE TRUST FUND

#### 4.1 In General

The assets within the Trust Fund shall be invested in investments selected by the Trustees or, if an Investment Manager has been appointed, the Investment Manager.

#### 4.2 Establishment of Investment Accounts

(a) Investment Manager, from time to time, may provide Proper Instructions directing the Trustees to establish one or more separate investment accounts within the Trust Fund, each separate account being hereinafter referred to as an "Investment Account." The Trustees shall transfer to and from each Investment Account those assets of the Trust Fund as Investment Manager directs in Proper Instructions. Investment Manager also may provide Proper Instructions directing the Trustees to eliminate one or more Investment Accounts, and the Trustees shall thereupon follow such directions of Investment Manager with respect to any such Investment Account and reinvest the proceeds in accordance with Proper Instructions of Investment Manager. The Trustees shall be under no duty to question, and shall not incur any liability on account of following, any Proper Instruction of Investment Manager with respect to the establishment or elimination of any Investment Account or the allocation or transfer of Securities or other Property between or among any Investment Accounts. The Trustees shall be under no duty to review the investment guidelines, objectives and restrictions established, or the specific investment directions in Proper Instructions given, by Investment Manager for any Investment Account, or to make suggestions to Investment Manager in connection therewith.

(b) All interest, dividends and other income received with respect to, and any proceeds received from the sale, exchange or other disposition of, Securities or other Property held in an Investment Account shall be credited to and reinvested in that Investment Account unless otherwise directed in Proper Instructions by Investment



Manager. All expenses of the Trust Fund which are allocable to a particular Investment Account shall be so allocated and charged.

(c) If the Trustees conclude that it may be subject to a conflict of interest with respect to any matter relating to its fiduciary duties with respect to the Trust that might affect, or have the appearance of affecting, the performance of its fiduciary responsibilities under this Trust agreement, the Trustees shall promptly notify Investment Manager and, at Investment Manager's request, shall cooperate with Investment Manager in the selection of a separate fiduciary to assume the Trustees' fiduciary responsibilities with respect to such matter, and Investment Manager shall, by Proper Instructions to the Trustees, appoint a fiduciary to assume such fiduciary responsibilities.

#### 4.3 Investment Managers

(a) The Corporation, from time to time, may appoint one or more investment managers ("Investment Managers") under a written investment management agreement describing the powers and duties of the Investment Manager (including the applicable investment guidelines) to direct the investment and reinvestment of all or a portion of an Investment Account. Investment Manager shall be responsible for ascertaining that while each Investment Manager is acting in that capacity, the following requirements are satisfied:

(i) The Investment Manager is either (A) registered as an investment adviser under the Investment Advisers Act of 1940, as amended, (B) a bank as defined in that Act, or (C) an insurance company qualified to perform the services described in (ii) below under the laws of more than one state.

(ii) The Investment Manager has been properly designated by Investment Manager to manage, acquire or dispose of any assets of all or part of an Investment Account for which it is responsible hereunder.

(iii) The Investment Manager has acknowledged in writing to Investment Manager that he/she or it is a fiduciary within the meaning of



Section 3(21)(A) of ERISA with respect to the Plan and the assets of the Trust for which it has responsibility.

Investment Manager shall furnish the Trustees with written notice of the appointment of each Investment Manager hereunder, and of the termination of any such appointment. Such notice shall include Proper Instructions specifying the assets which shall constitute the Investment Account. The Trustees shall be fully protected in relying upon the effectiveness of such appointment and the Investment Manager's continuing satisfaction of the requirements set forth above until it receives written notice from Investment Manager to the contrary.

(b) The Trustees shall conclusively presume that each Investment Manager under its investment management agreement is entitled to act, in directing the investment and reinvestment of the Investment Account for which it is responsible, in its sole and independent discretion and without limitation. The Trustees shall have no responsibility with respect to the formulation of or compliance with any investment or diversification policies established with respect to an Investment Account unless the Trustees or an affiliate of the Trustees is the Investment Manager of the Investment Account.

#### 4.4 Investment Manager's Directed Investment Accounts

The Trustees shall, if so directed in Proper Instructions of Investment Manager, segregate all or a portion of the Trust Fund held by it into one or more separate Investment Accounts to be known as Investment Manager's Directed Accounts, with respect to which Investment Manager shall have the powers and duties granted to an Investment Manager under this Trust agreement. Investment Manager, by Proper Instructions to the Trustees, may at any time relinquish its powers under this Section 4.4 and direct that a Investment Manager Directed Account shall no longer be maintained. In addition, during any time when there is no Investment Manager with respect to an Investment Account (such as before an investment management agreement takes effect or after it terminates, as the case may be), Investment Manager shall direct the investment and reinvestment of such Investment Account. Whenever Investment Manager is



directing the investment and reinvestment of an Investment Account, Investment Manager shall have the powers and duties which an Investment Manager would have under this Trust agreement if an Investment Manager were then serving and the Trustees shall be protected in relying on Investment Manager's Proper Instructions without reviewing investments or making suggestions to the same extent as it would be protected under this Trust agreement if it had relied on the Proper Instructions of an Investment Manager.

#### 4.5 Trustees Directed Investment Accounts

The Trustees shall serve as a directed Trustees and shall have no duty or responsibility to direct the investment and reinvestment of the Trust Fund or any Investment Account unless expressly agreed to in writing between the Trustees and Investment Manager. In the event that the Trustees enter into such an agreement, it shall have the powers and duties of an Investment Manager under this Trust agreement with regard to that Investment Account.

#### 4.6 Certain Orders to Brokers

Except as otherwise provided in this Trust agreement, the Investment Manager of an Investment Account (or Investment Manager in the case of Investment Manager's Directed Account) shall have the power and authority to be exercised in its sole discretion at any time, and from time to time, to issue orders for the purchase or sale of securities directly to a broker. Proper Instructions issuing each such order shall be given promptly to the Trustees by the Investment Manager or Investment Manager (in the case of Investment Manager's Directed Account), and the confirmation of each such order shall be confirmed or electronically affirmed to the Trustees by the broker. Unless otherwise directed by the Investment Manager or Investment Manager (in the case of Investment Manager's Directed Account), such Proper Instructions shall be authority for the Trustees to pay for Securities or other Property purchased or to deliver Securities or other Property sold, as the case may be. Upon Proper Instructions of the Investment Manager or Investment Manager (in the case of Investment Manager's Directed Account), the Trustees will execute and deliver appropriate trading authorizations, but no



such authorization shall be deemed to increase the liability or responsibility of the Trustees under this Trust agreement.

#### 4.7 Proxies: Corporate Actions

With respect to the voting of proxies for securities that are subject to the investment direction of Investment Manager or an Investment Manager, the Trustees shall cause to be provided to Investment Manager or the Investment Manager, as applicable, any proxy voting materials with respect to such securities that are actually received by the Trustees. With respect to tenders, exchanges, purchase offers, rights offerings and other transactions which require discretionary action other than proxy voting, the Trustees shall notify Investment Manager or the Investment Manager, as applicable, of such transactions that are actually received by the Trustees and the Trustees shall request instructions with respect thereto. The Trustees shall have no duty or obligation to exercise any voting or other right associated with any security over which Investment Manager or an Investment Manager has discretion unless it receives from such party timely Proper Instructions of how the right should be exercised.

#### 4.8 Reliance on Investment Manager or Investment Manager

(a) The Trustees shall have no duty or obligation to invest, manage or control any portion of the Trust Fund subject to investment direction by Investment Manager (in the case of Investment Manager's Directed Account) or an Investment Manager.

(b) The Trustees shall invest cash balances held from time to time with respect to the portion of the Trust Fund subject to investment direction by Investment Manager or an Investment Manager in a money market mutual fund, interest-bearing deposit account, or similar short-term funding vehicle selected by such party, until Proper Instructions specifying investment directions are received.

(c) The Trustees shall have no duty to monitor the Trust Fund's rights as owner of any investment directed by Proper Instructions of an Investment Manager or Investment Manager (in the case of Investment Manager's Directed Account), to make any independent investigation or inquiry to determine whether a transaction will



constitute a prohibited transaction under ERISA or the Code or whether an investment is authorized under this Trust agreement or any other agreement or Applicable Law affecting the Investment Manager's or Investment Manager's authority and Trustees may rely on representations of the Investment Manager, Investment Manager or other fiduciary stating that the transaction does not constitute a prohibited transaction. In addition, the Trustees shall not be responsible for the form, genuineness, validity, sufficiency or effect of any document executed or held by the Trustees (or delivered to the Trustees) on the Proper Instructions of an Investment Manager or Investment Manager or if, for any reason other than the negligence or willful misconduct of the Trustees, any rights of the Trust in any such document shall lapse or become unenforceable.

## **ARTICLE 5**

### **POWERS OF THE TRUSTEES**

#### **5.1 Investment Powers of the Trustees**

The Trustees shall have and exercise the following powers and authority (i) over Investment Accounts where it has express investment management discretion as provided in Section 4.5, or (ii) upon direction by Proper Instructions of the Investment Manager or Investment Manager, as the case may be, for all other Investment Accounts:

- (a) To purchase, receive or subscribe for any Securities or other Property and to retain in trust such Securities or other Property and hold in depositories or other book entry systems or with Subcustodians of the Trustees.
- (b) To sell for cash or on credit, to grant options, convert, redeem, exchange for other Securities or other Property, to enter into standby agreements for future investment, either with or without a standby fee, or otherwise to take any and all actions with respect to any Securities or other Property, including to enter into and settle transactions in short selling programs, foreign exchange or foreign exchange contracts at any time held by it.



(c) To settle, compromise or submit to arbitration any claims, debts or damages due or owing to or from the Trust, to commence or defend suits or legal proceedings and to represent the trust in all suits or legal proceedings in any court of law or before any other body or tribunal subject to the approval of the Administrator.

(d) To trade in financial options and futures (including index options and options on futures); to enter into repurchase agreements, reverse, repurchase agreements, swaps, caps, floors, straddles, collars and other derivative arrangements and to execute in connection therewith such account agreements and other agreements in such form and upon such terms as the Investment Manager or Investment Manager shall direct.

(e) Subject to the provisions of this Subsection and Section 4.7, to vote any Securities or other Property and exercise any right appurtenant to any stock, Security or other Property held in the Trust Fund, either in person or by general or limited proxy, power of attorney or other instrument. The Trustees shall not have proxy voting authority or the authority to exercise other discretionary rights with respect to any stock, Securities or other Property that is subject to the investment direction of Investment Manager or an Investment Manager. With respect to the voting of proxies for Securities or other Property that are subject to the investment direction of Investment Manager or an Investment Manager, the Trustees shall cause to be provided to Investment Manager or the Investment Manager, as applicable, any proxy voting materials with respect to such Securities or other Property. With respect to tenders, exchanges, purchase offers, rights offerings and other transactions which require discretionary action other than proxy voting, the Trustees shall notify Investment Manager or the Investment Manager, as applicable, of such transactions and the Trustees shall request instructions with respect thereto. The Trustees shall have no duty or obligation to exercise any voting or other right associated with any Securities or other Property over which Investment Manager or an Investment Manager has discretion unless it receives from such party timely written direction of how the right should be exercised.

(f) If approved by Investment Manager, to loan, pursuant to separate agreements as may be agreed upon, any securities to brokers or dealers and to secure the



same in any manner, and during the term of any such loan to permit the loaned securities to be transferred into the name of and voted by the borrower or others.

(g) To purchase, enter, sell, hold, and generally deal in any manner in and with contracts for the immediate or future delivery of financial instruments of any issuer or of any other property; to grant, purchase, sell, exercise, permit to expire, permit to be held in escrow, and otherwise to acquire, dispose of, hold and generally deal in any manner with and in all forms of options in any combination; and, in connection with its exercise of the powers granted in this Trust agreement, to deposit any Securities or other Property as collateral with any broker-dealer or other Person, to permit Securities or other Property to be held by or in the name of others or in transferable form, to retain any form of Securities or other Property received as a result of the exercise of any of the foregoing powers whether or not investment in such Securities or other Property is otherwise authorized under this Trust agreement and to hold and administer any Securities or other Property with respect to which the foregoing powers have or may be exercised, including any securities or collateral acquired by it or in any property received as a result of its exercise of such powers, as a part of the account subject to the foregoing powers, or in any sub-account, which property may be invested in Securities or other Property of different types than the Securities or other Property otherwise held in the account.

(h) To hold part or all of the Trust Fund uninvested to the extent that the directing party ascertains as reasonable and necessary for limited periods of time.

(i) To employ suitable agents and counsel and to pay their reasonable and proper expenses and compensation, all upon such terms and conditions as may be deemed advisable by the Investment Manager or Investment Manager.

(j) To form corporations or other Persons and to create trusts to hold title or take other action with respect to any Securities or other Property, all upon such terms and conditions as may be deemed advisable by the Investment Manager or Investment Manager.